

**Senate File 149 - Introduced**

SENATE FILE 149

BY ZAUN

**A BILL FOR**

1 An Act relating to the review of administrative rules and the  
2 rulemaking process.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 7.17, Code 2017, is amended to read as  
2 follows:

3 **7.17 Office of administrative rules coordinator.**

4 1. The governor shall establish the office of the  
5 administrative rules coordinator, and appoint its staff, which  
6 shall be a part of the governor's office.

7 2. The administrative rules coordinator shall receive all  
8 notices and rules adopted pursuant to [chapter 17A](#) and provide  
9 the governor with an opportunity to review and object to any  
10 rule as provided in [chapter 17A](#).

11 3. a. The administrative rules coordinator shall create a  
12 citizens' committee, consisting of regulators, stakeholders,  
13 members of the public, and members of the general assembly,  
14 to advise the administrative rules coordinator on rulemaking  
15 issues.

16 b. The members of the committee shall not be paid a per diem  
17 but shall be reimbursed for travel expenses.

18 Sec. 2. Section 17A.4, subsection 1, paragraph b, Code 2017,  
19 is amended to read as follows:

20 b. (1) Afford all interested persons not less than twenty  
21 days to submit data, views, or arguments in writing, including  
22 in an electronic format. If timely requested in writing by  
23 twenty-five interested persons, by a governmental subdivision,  
24 by the administrative rules review committee, by an agency, or  
25 by an association having not less than twenty-five members, the  
26 agency must give interested persons an opportunity to make oral  
27 presentation.

28 (2) To the extent practicable, the agency shall provide an  
29 opportunity to make these oral presentations using the Iowa  
30 communications network or other electronic means and provide  
31 public access at multiple sites throughout the state. If  
32 a request is received from twenty-five interested persons  
33 residing in the same city or county, the agency shall provide  
34 an opportunity for oral presentation in that city or county.

35 (3) The opportunity for oral presentation must be held

1 at least twenty days after publication of the notice of its  
 2 time and place in the Iowa administrative bulletin. The  
 3 agency shall consider fully all written and oral submissions  
 4 respecting the proposed rule. Within one hundred eighty  
 5 days following either the notice published according to the  
 6 provisions of paragraph "a" or within one hundred eighty  
 7 days after the last date of the oral presentations on the  
 8 proposed rule, whichever is later, the agency shall adopt a  
 9 rule pursuant to the rulemaking proceeding or shall terminate  
 10 the proceeding by publishing notice of termination in the Iowa  
 11 administrative bulletin.

12 Sec. 3. Section 17A.4, subsection 2, Code 2017, is amended  
 13 to read as follows:

14 2. An agency shall include in a preamble to each rule  
 15 it adopts ~~a brief explanation of the principal reasons for~~  
 16 ~~its action pursuant to section 17A.5 a concise statement~~  
 17 of the principal reasons for and against the rule adopted,  
 18 incorporating in the statement the reasons for overruling  
 19 considerations urged against the rule and, if applicable, a  
 20 brief explanation of the principal reasons for its failure  
 21 to provide in ~~that~~ the rule for the waiver of the rule in  
 22 specified situations if no such waiver provision is included  
 23 in the rule. ~~This explanatory requirement does not apply when~~  
 24 ~~the agency adopts a rule that only defines the meaning of a~~  
 25 ~~provision of law if the agency does not possess delegated~~  
 26 ~~authority to bind the courts to any extent with its definition.~~  
 27 ~~In addition, if requested to do so by an interested person,~~  
 28 ~~either prior to adoption or within thirty days thereafter, the~~  
 29 ~~agency shall issue a concise statement of the principal reasons~~  
 30 ~~for and against the rule adopted, incorporating therein the~~  
 31 ~~reasons for overruling considerations urged against the rule.~~  
 32 ~~This concise statement shall be issued either at the time of~~  
 33 ~~the adoption of the rule or within thirty-five days after the~~  
 34 ~~agency receives the request.~~

35 Sec. 4. NEW SECTION. 17A.4B Job impact statement.

1     1.   *a. "Benefit"* means the reasonably identifiable and  
2 quantifiable positive effect or outcome that is expected to  
3 result from implementation of a rule.

4     *b. "Cost"* means reasonably identifiable, significant, direct  
5 or indirect, economic impact that is expected to result from  
6 implementation of and compliance with a rule.

7     *c. "Cost-benefit analysis"* means regulatory analysis  
8 to provide the public with transparency regarding the  
9 cost-effectiveness of a rule, including the economic costs  
10 and benefits and the effectiveness weighed by the agency  
11 in adopting the rule. *"Cost-benefit analysis"* includes a  
12 comparison of the probable costs and benefits of a rule to the  
13 probable costs and benefits of less intrusive or less expensive  
14 methods that exist for achieving the purpose of the rule.

15    *d. "Jobs"* means private sector employment including  
16 self-employment and areas for potential for employment growth.

17    *e. "Jobs impact statement"* means a statement that does all  
18 of the following:

19       (1) Identifies the purpose of a rule and the applicable  
20 section of the statute that provides specific legal authority  
21 for the agency to adopt the rule.

22       (2) Identifies and describes the cost that the agency  
23 anticipates state agencies, local governments, the public, and  
24 the regulated entities, including regulated businesses and  
25 self-employed individuals, will incur due to implementing and  
26 complying with a rule.

27       (3) Determines whether a rule would have a positive  
28 or negative impact on private sector jobs and employment  
29 opportunities in Iowa.

30       (4) Describes and quantifies the nature of the impact a rule  
31 will have on private sector jobs and employment opportunities  
32 including the categories of jobs and employment opportunities  
33 that are affected by the rule, and the number of jobs or  
34 potential job opportunities and the regions of the state  
35 affected by the rule.

1 (5) Identifies, where possible, the additional costs to  
2 employers per employee due to implementing and complying with  
3 a rule.

4 (6) Includes other relevant analysis requested by the  
5 administrative rules coordinator.

6 2. Prior to implementation of a rule, an agency shall  
7 take steps to minimize the adverse impact on jobs and  
8 the development of new employment opportunities due to  
9 implementation of the rule.

10 3. An agency shall provide a jobs impact statement to the  
11 administrative rules coordinator prior to publication of a  
12 notice of intended action or the publication of a rule filed  
13 without notice pursuant to section 17A.4, subsection 3.

14 4. The jobs impact statement shall be published as part  
15 of the preamble to the notice of rulemaking in the Iowa  
16 administrative bulletin, unless the administrative rules  
17 coordinator determines that publication of the entire jobs  
18 impact statement would be unnecessary or impractical.

19 5. An agency shall accept comments and information  
20 from stakeholders prior to final preparation of the jobs  
21 impact statement. Any concerned private sector employer or  
22 self-employed individual, potential employer, potential small  
23 business, or member of the public may submit information  
24 relating to a jobs impact statement prior to publication of  
25 a notice of intended action or publication of a rule filed  
26 without notice pursuant to section 17A.4, subsection 3. An  
27 agency may request that such information be submitted to the  
28 agency.

29 6. If a jobs impact statement is revised after a notice  
30 of intended action or a rule filed without notice pursuant to  
31 section 17A.4, subsection 3, is published, the revised jobs  
32 impact statement shall be published as part of the preamble  
33 to the adopted version of the rule, unless the administrative  
34 rules coordinator determines that publication of the entire  
35 jobs impact statement would be unnecessary or impractical.

1     7. The analysis in the jobs impact statement shall give  
2 particular weight to jobs in production sectors of the economy  
3 which includes the manufacturing and agricultural sectors of  
4 the economy and shall include analysis, where applicable, of  
5 the impact of the rule on expansion of existing businesses or  
6 facilities.

7     8. The administrative rules coordinator may waive the jobs  
8 impact statement requirement for rules proposed under section  
9 17A.4, subsection 3, or section 17A.5, subsection 2, paragraph  
10 "b", or if unnecessary or impractical.

11     9. By July 1, 2018, and every five years thereafter, an  
12 agency shall prepare a comprehensive jobs impact statement  
13 for all of the agency's rules. An agency shall transmit  
14 each five-year comprehensive jobs impact statement to the  
15 administrative rules coordinator and the administrative rules  
16 review committee. An agency shall publish the statement, or a  
17 summary, on the internet site established pursuant to section  
18 17A.6A.

19     Sec. 5. NEW SECTION. 17A.4C **Negotiated rulemaking.**

20     1. An agency shall create a negotiated rulemaking group if  
21 required by statute. An agency may, on its own motion or upon  
22 request, create a negotiated rulemaking group if the agency  
23 determines that a negotiated rulemaking group can adequately  
24 represent the interests that will be significantly affected by  
25 a draft rule proposal and that it is feasible and appropriate  
26 in the particular rulemaking. Notice of the creation of a  
27 negotiated rulemaking group shall be published in the Iowa  
28 administrative bulletin. Upon establishing a negotiated  
29 rulemaking group, the agency shall also specify a time frame  
30 for group deliberations.

31     2. Unless otherwise provided by statute, the agency shall  
32 appoint a sufficient number of members to the group so that  
33 a fair cross section of interests and opinions regarding the  
34 draft rule proposal is represented. One person shall be  
35 appointed to represent the agency. The group shall select its

1 own chairperson and adopt its rules of procedure. All meetings  
2 of the group shall be open to the public. A majority of the  
3 membership constitutes a quorum. Members shall not receive  
4 any per diem payment but shall be reimbursed for all necessary  
5 expenses. Any vacancy shall be filled in the same manner as  
6 the initial appointment.

7 3. Prior to the submission of a notice of intended action  
8 to the administrative rules coordinator and the administrative  
9 code editor pursuant to section 17A.4, subsection 1, the group  
10 shall consider the terms or substance of the rule proposed  
11 by the agency and shall attempt to reach a consensus on the  
12 advisability of adopting the draft rule proposal.

13 4. If a group reaches a consensus on a draft rule proposal,  
14 the group shall transmit to the agency a report containing the  
15 consensus on the draft rule proposal. If the group does not  
16 reach a consensus on a draft rule proposal within the specified  
17 time frame, the group shall transmit to the agency a report  
18 stating that inability to reach a consensus and specifying any  
19 areas in which the group reached a consensus. The group may  
20 include in a report any other information, recommendations,  
21 or materials that the group considers appropriate. Any group  
22 member may include as an addendum to the report additional  
23 information, recommendations, or materials. A report issued  
24 under this subsection shall not be considered final agency  
25 action for purposes of judicial review.

26 5. Unless otherwise provided by statute, following  
27 consideration of a draft rule proposal by a negotiated  
28 rulemaking group, the agency may commence rulemaking as  
29 provided in section 17A.4. The group is automatically  
30 abolished upon the agency's adoption of the rule pursuant to  
31 the provisions of section 17A.5.

32 Sec. 6. Section 17A.7, subsection 2, Code 2017, is amended  
33 to read as follows:

34 2. Beginning July 1, 2012, over each five-year period of  
35 time, an agency shall conduct an ongoing and comprehensive

1 review of all of the agency's rules. The goal of the review  
 2 is the identification and elimination of all rules of the  
 3 agency that are outdated, redundant, ~~or~~ overbroad, ineffective,  
 4 unnecessary, inconsistent or incompatible with statute or its  
 5 own rules or those of other agencies, or otherwise undesirable.  
 6 An agency shall commence its review by developing a plan of  
 7 review in consultation with major stakeholders and constituent  
 8 groups. As part of its review, an agency shall review existing  
 9 policy and interpretive statements or similar documents to  
 10 determine whether it would be necessary or appropriate to adopt  
 11 these statements or documents as rules.

12 a. An agency shall establish its five-year plan for  
 13 review of its rules and publish the plan on the internet site  
 14 established pursuant to section 17A.6A.

15 b. An agency's plan for review shall do all of the  
 16 following:

17 (1) Contain a schedule that lists when the review of each  
 18 rule or group of rules will occur.

19 (2) State the method by which the agency will analyze  
 20 the rule under review regarding the considerations listed in  
 21 paragraph "c".

22 (3) Provide a means for public participation in the review  
 23 process and specify how interested persons may participate in  
 24 the review.

25 (4) Identify instances where the agency may require an  
 26 exception to the review requirements.

27 (5) Provide a process for ongoing review of rules after the  
 28 initial five-year review period has expired.

29 c. An agency shall analyze its rules under review by  
 30 considering all of the following:

31 (1) The need for the rule.

32 (2) The clarity of the rule.

33 (3) The intent and legal authority for the rule.

34 (4) The qualitative and quantitative benefits and costs of  
 35 the rule.



1       (5)   The fairness of the rule.

2 d. When the agency completes the five-year review of the  
3 agency's own rules, the agency shall provide a summary of  
4 the results to the administrative rules coordinator and the  
5 administrative rules review committee.

6     Sec. 7. NEW SECTION. 17A.24 Rule implementation of federal  
7 statute, regulation, or policy.

8 1. Except as otherwise explicitly authorized by state law,  
9 an agency charged with the implementation of a federal statute,  
10 regulation, or policy shall not implement the federal statute,  
11 regulation, or policy in a manner that exceeds the specific  
12 requirements of the federal statute, regulation, or policy.

13       2. Any portion of an agency rule or policy that implements  
14 a federal statute, regulation, or policy and that exceeds the  
15 specific requirements of the federal statute, regulation, or  
16 policy is automatically superseded by the specific requirements  
17 of that federal statute, regulation, or policy.

18      Sec. 8.   ENVIRONMENTAL REGULATION STUDY.

19 1. The legislative council, in consultation with the  
20 department of natural resources, shall establish a study to  
21 analyze the projected financial effects of current and proposed  
22 United States environmental protection agency regulations and  
23 Iowa department of natural resources rules on Iowa cities over  
24 a ten-year period.

25       2. The study should include an analysis of projected  
26 financial costs of such regulations and rules on a hypothetical  
27 small Iowa community, medium-sized Iowa community, and large  
28 Iowa community.

29 3. The study shall be concluded by June 30, 2018, and a  
30 report shall be provided to the members of the general assembly  
31 and to the governor.

32 EXPLANATION

33           The inclusion of this explanation does not constitute agreement with  
34           the explanation's substance by the members of the general assembly.

35 This bill relates to the review of administrative rules and

1 the rulemaking process.

2 CITIZENS' ADVISORY COMMITTEE. The bill requires that the  
3 administrative rules coordinator create a citizens' committee,  
4 to advise the administrative rules coordinator on rulemaking  
5 issues. The members of the committee shall not be paid a per  
6 diem but shall be reimbursed for travel expenses.

7 RULEMAKING HEARINGS THROUGHOUT STATE. The bill requires  
8 administrative agencies, to the extent practicable, to hold  
9 rulemaking hearings in varied locations throughout the state  
10 via the Iowa communications network or other electronic means.  
11 The bill provides that a hearing must be held in a particular  
12 city or county when 25 interested persons from that city or  
13 county so request.

14 PRINCIPAL REASONS FOR AND AGAINST RULE. The bill requires  
15 that every adopted rule must be accompanied by a concise  
16 statement of the principal reasons for and against the rule  
17 adopted. Under current law such a statement is only provided  
18 on request.

19 JOBS IMPACT STATEMENTS. The bill requires that every  
20 proposed rule under a notice of intended action or publication  
21 without notice contain a jobs impact statement which outlines  
22 the purpose and statutory authority of the rule and analyzes  
23 and sets out in detail the impact of the proposed rule on state  
24 agencies, local governments, the public, and the regulated  
25 entities, including regulated businesses and self-employed  
26 individuals affected by the rule. The statement must also  
27 determine whether a proposed rule would have a positive  
28 or negative impact on private sector jobs and employment  
29 opportunities.

30 Commencing July 1, 2018, and every five years thereafter,  
31 each agency shall prepare a jobs impact statement for all of  
32 the agency's rules.

33 As part of this requirement, an agency is required to  
34 take steps to minimize the adverse impact on jobs and the  
35 development of new employment opportunities before proposing

1 a rule.

2 The administrative rules coordinator may waive the jobs  
3 impact statement requirement for rules filed using emergency  
4 rulemaking procedures or if unnecessary or impractical.

5 NEGOTIATED RULEMAKING GROUPS. If required by statute, this  
6 bill requires an agency to create a negotiated rulemaking group  
7 to review draft rule proposals prior to filing a notice of  
8 intended action pursuant to Code section 17A.4, subsection 1.  
9 Where a statute does not require this review, the bill allows  
10 an agency to create such a review group. Members are appointed  
11 by the agency and the composition must adequately represent  
12 a fair cross section of interests and opinions regarding the  
13 rule. Once such a group is created, the agency may only  
14 commence rulemaking after the group has considered the draft  
15 rule proposal in question.

16 FIVE-YEAR CYCLE OF AGENCY REVIEW OF RULES. Current  
17 law requires that each state agency review all of its  
18 administrative rules on a five-year cycle. The bill provides  
19 additional procedures and criteria for such reviews.

20 FEDERAL LAW IMPLEMENTATION. The bill also provides that  
21 state implementation of a federal statute, regulation,  
22 or policy by a state agency shall not exceed the specific  
23 requirements of the federal statute, regulation, or  
24 policy, except as specifically allowed by state law. Any  
25 portion of a state rule or policy that implements a federal  
26 statute, regulation, or policy and that exceeds the specific  
27 requirements of the federal statute, regulation, or policy is  
28 automatically superseded by the specific requirements of that  
29 federal statute, regulation, or policy.

30 ENVIRONMENTAL RULES STUDY. The bill provides that the  
31 legislative council, in consultation with the department of  
32 natural resources, shall establish a study to analyze the  
33 projected financial effects of current and proposed United  
34 States environmental protection agency regulations and Iowa  
35 department of natural resources rules on Iowa cities over a

1 10-year period. The report of the study must be completed by  
2 June 30, 2018.